

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION**DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST
FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES
28 TAC §§5.4171 - 5.4173, 5.4182, 5.4183, 5.4184, 5.4185, 5.4187, 5.4189 - 5.4192****7. TEXT.****§5.4171. Premium Surcharge Requirement.**

(a) Following a catastrophic event, insurers may be required to assess a premium surcharge under the Insurance Code §2210.613(b) and §2210.613(c) on all policyholders ~~[with property and casualty insurance policies that provide coverage on premises, operations, or insured property located in a catastrophe area]~~ of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to ~~[admitted]~~ property and casualty insurers, the Association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.

(b) This section and §§5.4172, 5.4173, ~~[and] 5.4181, 5.4182, and 5.4184 - 5.4192~~ of this division (relating to Premium Surcharge Definitions, Determination of the Surcharge Percentage, Premiums to be Surcharged, ~~[Allocation]~~ Method for ~~[Specified Lines of Insurance]~~ Determining the Premium Surcharge, ~~[Allocation Method for Other Lines of Insurance]~~, Application of the Surcharges, Premium Surcharges are Mandatory, Remittance of Premium Surcharges, Offsets, Surcharges not Subject to Commissions or Premium Taxes, Notification Requirements, Annual Premium

Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) ~~[do not]~~ apply only to policies written ~~[and reported under the following annual statement lines of business]~~ for the following types of insurance: [federal flood; medical malpractice; group accident and health; all other accident and health; workers' compensation; excess workers' compensation, and surety] commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (non-liability portion); private passenger automobile no-fault (PIP); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no-fault (PIP); other commercial automobile liability; and commercial automobile physical damage.

(c) This section and §§5.4172, 5.4173, ~~[and] 5.4181, 5.4182, and 5.4184~~ - 5.4192 of this division do not apply to:

(1) a farm mutual insurance company operating under the Insurance Code Chapter 911;

(2) a nonaffiliated county mutual fire insurance company described by the Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by the Insurance Code §912.310(a)(2);

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections; and

(4) premium and policies issued by an affiliated surplus lines insurer that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under the Insurance Code Chapter 2210.

(d) For all lines of insurance subject to ~~§5.4182 of~~ this division, ~~[(relating to Allocation Method for Specified Lines of Insurance)]~~ this section and, §§5.4172, 5.4173, and 5.4181, 5.4182, and 5.4184 - 5.4192 of this division are effective June 1, 2011.

~~[(e) For all other lines, this section, §§5.4172, 5.4173 and 5.4181 - 5.4192 of this division are effective October 1, 2011.]~~

§5.4172. Premium Surcharge Definitions. The following words and terms when used in §§5.4172, 5.4173, and 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Requirement, Premiums to be Surcharged, ~~[Allocation Method for [Specified Lines of Insurance]]~~ Determining the Premium Surcharge, ~~[Allocation Method for Other Lines of Insurance,]~~ Application of the Surcharges, Premium Surcharges are Mandatory, Remittance of Premium Surcharges, Offsets, Surcharges not Subject to Commissions or Premium Taxes, Determination of the Surcharge Percentage, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) shall have the following meanings unless the context clearly indicates otherwise:

(1) Affiliated insurer--An insurer that is an affiliate, as described by the Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas. Affiliated insurer includes an

insurer not authorized to engage in the business of property or casualty insurance in the State of Texas.

(2) Affiliated surplus lines insurer--An eligible surplus lines insurer that is an affiliate, as described by the Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas.

(3) Exposure--The basic unit of risk that is used by an insurer to determine the insured's premium.

(4) Insured property--Real property, or tangible or intangible personal property, including automobiles, covered under an insurance policy issued by an insurer.

(5) Insurer--Each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of such an insurer, as described by the Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the Association, and the Texas Fair Access to Insurance Requirements Plan Association. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

~~[(6) Operations--A person's interest in property, or activities, that may result in, or give rise to, a loss that is insurable under a property or casualty insurance policy, including the use of a automobile; ownership, lease, or occupancy of a residence or other real property; and activities performed by a person in connection with the manufacture, distribution, or sale of goods or services. A person is considered to have operations in the catastrophe area if the person maintains an automobile or~~

physical location in the catastrophe area, regardless of whether that location is owned, leased, rented, or occupied by the person.]

~~[(7) Premises--A physical location where a person resides, or owns, leases, rents, or occupies real property, or has operations.]~~

(6) ~~[(8)]~~ Premium surcharge percentage--The percentage amount determined by the commissioner under §5.4173 of this division (relating to the Determination of the Surcharge Percentage).

(7) Residential property insurance--insurance against loss to real or tangible personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. Determination of the Surcharge Percentage.

(a) The Association shall review information provided by the Texas Public Finance Authority concerning the amount of the class 2 public security obligations and estimated amount of the class 2 public security administrative expenses, including any required contractual coverage amount, to determine whether the Association has sufficient available funds to pay the public security obligations and public security administrative expenses, if any, including any contractual coverage amount, or whether a premium surcharge under the Insurance Code §2210.613 is required. The Association may consider all of the Association's outstanding obligations and sources of funds to pay those obligations.

(b) If the Association determines that it is ~~[necessary to collect revenue specified in the Insurance Code §2210.613]~~ unable to satisfy the estimated amount of class 2 public securities obligations and administrative expenses with available funds, the Association shall submit a written request to the commissioner to approve a premium surcharge on policyholders with ~~[premises, operations, or]~~ insured property, including automobiles, located or principally garaged in the catastrophe area as authorized under the Insurance Code §2210.613. The Association's request must specify:

(1) the total amount of the class 2 public security obligations and estimated amount of the class 2 public security administrative expenses, including any required contractual coverage amount, provided in the TPFA notice;

(2) the amount to be collected from insurers through a member assessment, which may not exceed 30 percent of the amount specified in the TPFA notice;

(3) the amount to be collected from catastrophe area policyholders through premium surcharges, which may not exceed 70 percent of the amount specified in the TPFA notice; and

(4) the date upon which the premium surcharge is to commence and the date the premium surcharge for the noticed amount is to end.

(c) On approval by the commissioner each insurer shall assess a premium surcharge in a percentage amount set by the commissioner to the insurer's policyholders. The premium surcharge percentage shall be applied to the premium attributable to ~~[premises, operations, and]~~ insured property, including automobiles,

located or principally garaged in the catastrophe area on policies that become effective, or on multi-year policies that become effective or have an anniversary date, during the premium surcharge period when the premium surcharge percentage will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 - 5.4188 of this division (relating to Premiums to be Surcharged, ~~[Allocation]~~ Method for ~~[Specified Lines of Insurance]~~ Determining the Premium Surcharge, ~~[Allocation Method for Other Lines of Insurance]~~, Application of the Surcharges, Premium Surcharges are Mandatory, Remittance of Premium Surcharges, Offsets, and Surcharges not Subject to Commissions or Premium Taxes, respectively). The premium surcharge date specified by the commissioner shall be at least 180 days after the date the commissioner issues notice of approval of the public securities.

(d) This section is part of the ~~[Texas Windstorm Insurance]~~ Association's plan of operation and shall control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4181. Premiums to be Surcharged.

(a) The premium surcharge percentage shall be applied to:

(1) amounts reported as premium for the purposes of reporting under the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas; and

(2) if not reported as described in paragraph (1) of this subsection, those additional amounts collected that are subject to premium taxation by the comptroller, including policy fees not reported as premium; surplus lines premium tax; and independently procured premium tax.

(b) Premium surcharges do not apply to fees that are neither reported as premium in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas, nor subject to premium taxation by the comptroller.

§5.4182. ~~[Allocation]~~ Method for ~~[Specified Lines]~~ Determining the Premium Surcharge.

(a) The methods addressed in this section shall apply to all:

(1) policies written and reported under the following annual statement lines of business: fire; allied lines; ~~[multi-peril crop;]~~ farm and ranch owners ~~[farmowners];~~ homeowners; commercial multi-peril (~~[property]~~non-liability portion); ~~[commercial multi-peril policies written on an indivisible premium basis, regardless whether reported as commercial multi-peril (property) or commercial multi-peril (liability); earthquake;]~~ private passenger auto no fault (personal injury protection (PIP)), other private passenger auto liability, and private passenger auto physical damage; and commercial auto no fault (personal injury protection (PIP)), other commercial auto liability, and commercial auto physical damage ~~[for policies where the premium is determined based on the geographic location of the exposures, or where the automobiles are principally garaged; boiler and machinery; burglary and theft]; and~~

~~[(2) personal and residential policies, including boat owners, personal liability, personal umbrella, and personal inland marine policies; and]~~

(2) ~~(3)~~ personal and commercial risks assigned by the Texas Automobile Insurance Plan Association (TAIPA) pursuant to the Insurance Code Chapter 2151.

(b) ~~The~~ [If the policy is rated based on the geographic location of the insured's premises, operations, or insured property, the] premium surcharge shall be determined by applying the premium surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to [premises, operations, or] insured property, including automobiles, located or principally garaged in the catastrophe area.

~~[(c) In cases where the policy is not rated based on the geographic location of the insured's premises, operations, or insured property, the insurer shall allocate premium to the catastrophe area based on the proportion the exposure in the catastrophe area bears to the total exposure on the policy. The premium surcharge percentage shall apply to that portion of the policy premium allocated to the catastrophe area.]~~

~~§5.4183. Allocation Method for Other Lines of Insurance.~~ For all other applicable lines of insurance not specified in §5.4182 of this division (relating to Allocation Method for Specified Lines of Insurance) the surcharge shall be determined as follows:

(1) ~~For lines of insurance where, as part of its normal underwriting, rating, or data collection processes, the insurer has sufficient information to determine the premium or exposure for each location, or can otherwise reasonably allocate premium to the catastrophe area, the insurer shall use the direct allocation methods set forth in §5.4182 of this division and determine the premium surcharge amount by applying the premium surcharge percentage to the premium attributable to the catastrophe area.~~

(2) ~~For other lines and types of insurance not included in paragraph (1) of this section, and where the insurer, including an affiliate, provides insurance to the named~~

~~insured covering real property and/or tangible personal property under a commercial property policy or a commercial multi-peril policy, regardless whether such coverage is provided on a monoline or multi-peril basis, the premium surcharge shall be determine as follows:~~

~~(A) The insurer shall determine the catastrophe area allocation percentage as the proportion of premium attributable to the catastrophe area for property insured under the commercial property or commercial multi-peril policy.~~

~~(B) The premium surcharge shall be determined by multiplying the total Texas premium by the catastrophe area allocation percentage and the premium surcharge percentage.~~

~~(3) For other lines, and types of insurance not included in subsection (a) of this section, and where neither the insurer nor an affiliate of the insurer provides insurance to the named insured covering real property and/or tangible personal property under a commercial property policy or a commercial multi-peril policy, the premium surcharge shall be determined as follows:~~

~~(A) Prior to the effective date of each new policy, and at the renewal of each renewal policy, the insurer shall determine from the insured the catastrophe area allocation percentage. The catastrophe area allocation percentage is determined as the proportion of premium attributable to the catastrophe area for property insured under the commercial property or commercial multi-peril (property) policy or the percentage of self-insured premium attributable to property located in the catastrophe area in the case where the insured is self-insured.~~

~~(B) The premium surcharge shall be determined by multiplying the total Texas premium by the catastrophe area allocation percentage and the premium surcharge percentage.~~

~~(C) Information required to be collected by insurers under subparagraph (A) of this paragraph shall be collected regardless whether or not a premium surcharge is in effect on the effective date, in the case of new policies, or the renewal date, in the case of renewal policies.~~

~~(D) Insurers are not required to verify or otherwise determine the reasonableness of information provided to them under subparagraph (A) of this paragraph.]~~

§5.4184. Application of the Surcharges.

(a) When assessed under the Insurance Code §2210.613, the premium surcharges shall apply to all policies with [premises, operations, or] insured property, including automobiles, located or principally garaged in the catastrophe area that are issued or renewed with effective dates in the assessment period specified in the commissioner's order, with two exceptions:

(1) insurers shall not surcharge policies, and are not responsible for collecting premium surcharges on policies, that did not go into effect or were cancelled as of the inception date of the policy; and

(2) for multi-year policies, the premium surcharge in effect on the effective date of the policy, or the anniversary date of the policy, shall be applied to the 12-month premium for the applicable policy period.

(b) Premium surcharges are refundable ~~[non-refundable]~~ under the Insurance Code §2210.613.

(1) If the policy is cancelled, an amount ~~[a pro-rata portion]~~ of the surcharge ~~[is not returned]~~ that is proportionate to the return premium shall be refunded to the policyholder; however,

(2) in lieu of a refund of the premium surcharge, the insurer may credit the return premium surcharge against amounts due the insurer but unpaid by the insured; and

~~[(2)]~~ (3) an additional surcharge shall not apply to a policy that was cancelled subsequent to the effective date of the policy, and is later reinstated. For purposes of this section a policy is reinstated if it covers the same period as the original policy without a lapse in coverage, except as provided in the Insurance Code §551.106.

~~[(c) A mid-term policy change consists of all transactions on a policy occurring within a seven day period that result in a change in the premium.]~~

(c) ~~[(d)]~~ If a mid-term policy change increases the premium on the policy, insureds must pay an additional surcharge for the increased premium attributable to ~~[premises, operations, or]~~ insured property, including automobiles, located or principally garaged in the catastrophe area which shall be determined ~~[as follows:]~~

~~[(1) For policies where the premium surcharge is determined under 5.4182 or §5.4183(1) of this division (relating to Allocation Method for Specified Lines of Insurance and Allocation Method for Other Lines of Insurance), the additional premium surcharge is determined]~~ by applying the applicable premium surcharge percentage to

that portion of the additional premium attributable to ~~[premises, operations or]~~ insured property, including automobiles, located or principally garaged in the catastrophe area.

~~[(2) For policies where the premium surcharge is determined under §5.4183(1) and (2) of this division, the additional premium surcharge is determined by applying the premium surcharge percentage and the catastrophe area allocation percentage to the additional premium.]~~

(d) [(e)] If a mid-term policy change decreases the premium, insureds are due a refund of the surcharge for the decreased premium attributable insured property, including automobiles, located or principally garaged in the catastrophe area which shall be determined by applying the applicable premium surcharge percentage to that portion of the return premium attributable to insured property, including automobiles, located or principally garaged in the catastrophe area [there shall be no corresponding decrease in the surcharge or refund of the surcharge]. The insurer shall credit or refund the excess surcharge to the insured within 20 days of the date of the transaction. The insurer may credit any refund paid or credited to the insured to the Association through the offset process described in §5.4187 of this division (relating to Offsets).

(e) [(f)] Surcharges or refunds shall apply to all premium changes due to exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration. Upon policy inception, the premium surcharge shall be collected on the deposit premium paid. If after exposure or premium audit, retrospective rating adjustment, or similar adjustment after policy expiration, an additional premium is required, an additional surcharge shall be paid. If after exposure

or premium audit, retrospective rating adjustment, or other similar adjustment after policy expiration, the deposit premium exceeds the actual premium, the excess surcharge shall be refunded to the insured, and the insurer may credit any refund paid to the Association through the offset process described in §5.4187 of this division [~~(relating to Offsets)~~]. Additional surcharges and refunds shall be determined [as follows:]

~~[(1) For policies where the premium surcharge is determined under §5.4182 or §5.4183(1) of this division, the additional premium surcharge (or refund) is determined] by applying the premium surcharge percentage in effect on the inception date of the policy, or the anniversary date of the policy in the case of multi-year policies, to the additional premium (or return premium) attributable to the catastrophe area.~~

~~[(2) For policies where the premium surcharge is determined under §5.4183(1) and (2) of this division, the additional premium surcharge (or refund) is determined by applying the premium surcharge percentage and the catastrophe area allocation percentage to the additional premium (or return premium).]~~

(f) ~~[(g)]~~ Notwithstanding whether a surcharge was in effect on the inception date of the policy, or the anniversary date in the case of multi-year policies, no additional premium surcharges or refunds shall apply to premium changes resulting from exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur when there is no premium surcharge in effect.

§5.4185. Premium Surcharges Are Mandatory.

(a) Insurers may not pay the surcharges in lieu of surcharging their policyholders; however, an insurer may remit a surcharge prior to collecting the surcharge from its policyholder.

(b) Insurers shall apply any money received from the insured to the premium surcharge prior to applying the funds to premium or any other obligation or debt owed to the insurer.

~~[(4)]~~ Premium surcharges may not be allocated pro-rata or otherwise mixed with premium over installment plan payments. All money received under an installment plan shall be applied first to the premium surcharge prior to applying the money to premium or any other obligation or debt owed to the insurer.

~~[(2) Premium surcharges may not be refunded to a premium finance company.]~~

(c) Pursuant to the Insurance Code §2210.613(d), the failure of a policyholder to pay the premium surcharge constitutes failure to pay premium for the purposes of policy cancellation.

§5.4186. Remittance of Premium Surcharges.

(a) Insurers shall remit to the Association the aggregate amount of surcharges paid by its policyholders; however, an affiliated surplus lines insurer may allow a surplus lines agent to remit premium surcharges to the Association on its behalf in accordance with any procedures established by the Association relating to premium surcharge remissions from surplus lines agents.

(b) Insurers, or surplus lines agents allowed by affiliated surplus lines insurers to remit surcharges pursuant to subsection (a) of this section, shall remit all surcharges paid by its insureds not later than the last day of the month following the month in which the surcharge was received.

(c) Insurers and agents may not allow, or require, policyholders to make separate payments for the surcharge amounts which are payable to the Association.

(d) Subsection (b) of this section applies to all insurers regardless of whether the insured paid the premium surcharge through an agent of the insurer or the insured paid the premium surcharge directly to the insurer.

(e) An affiliated surplus lines insurer who allows an agent to remit premium surcharges to the Association pursuant to subsection (a) of this section may be held liable by the department for the failure of its agent to remit the premium surcharges or timely remit the premium surcharges, pursuant to subsection (b) of this section.

§5.4187. Offsets.

(a) An insurer may credit a premium surcharge amount on its next remission to the Association if the insurer has already remitted the amount to the Association for:

(1) the portion of the surcharge the insurer was not able to collect from the insured prior to the collection of any funds for premium or any other obligation or debt owed to the insurer; [or]

(2) the portion of the surcharge paid to the Association subsequently refunded to the policyholder as a result of a mid-term cancellation or mid-term policy

change as described in §5.4184 of this division (relating to Application of the
Surcharges); or

(3) [(2)] the portion of a surcharge paid to the Association in excess of a
deposit premium as described in §5.4184 of this division [(relating to Application of the
Surcharges)].

(b) An agent may not offset payment of a premium surcharge to the insurer for
any reason. However, a surplus lines agent allowed by an affiliated surplus lines
insurer to remit surcharges to the Association on its behalf under §5.4186(a) of this
division (relating to Remittance of Premium Surcharges), may offset as provided in this
section.

§5.4188. Surcharges not Subject to Commissions or Premium Taxes.

(a) As provided by the Insurance Code §2210.613(d), premium surcharges are
not subject to either premium taxes or agents' commissions.

(b) Insurers may not increase the premium surcharges for premium taxes or
commissions, and agents, including a surplus lines agent, may not collect or charge
commissions for the premium surcharges.

§5.4189. Notification Requirements.

(a) Insurers shall provide written notice to policyholders receiving a premium
surcharge that their policy contains a surcharge. The notice shall read: "Texas
Insurance Code Sections 2210.073 and 2210.613 require a premium surcharge be
added to certain property and casualty insurance policies providing coverage in the

387 catastrophe area to pay the debt service on public securities issued to pay Texas
388 Windstorm Insurance Association claims resulting from a catastrophe event. A premium
389 surcharge {in the amount of \$_____} has been added to your premium. [~~This premium~~
390 ~~surcharge is non-refundable under Texas Insurance Code Section 2210.613.~~] Should
391 your policy be canceled by you or the insurer prior to its expiration date, a proportionate
392 amount of the premium surcharge will [not] be refunded to you. Failure to pay the
393 surcharge is grounds for cancellation of your policy."

394 (b) Insurers shall provide written notice to policyholders of the dollar amount of
395 the premium surcharge.

396 (c) Notices required under subsections (a) and (b) of this section shall:

397 (1) be provided at the time the policy is issued, in the case of new
398 business;

399 (2) be provided with the renewal notice, in the case of renewal business;

400 (3) be provided within 20 days of the end of the transaction period as
401 specified in §5.4184(c) of this division (relating to Application of the Surcharges) for any
402 mid-term change in the premium surcharge; and

403 (4) use at least 12 point font and either be contained on a separate page
404 or shown in a conspicuous location on the declarations page.

405
406 **§5.4190. Annual Premium Surcharge Report.**

407 (a) This section applies [~~does not apply~~] to an insurer that, during the calendar
408 year, [~~exclusively~~] wrote any [~~or all~~] of the following types of [~~lines of~~] insurance:
409 commercial fire; commercial allied lines; farm and ranch owners; residential property

410 insurance; commercial multiple peril (non-liability portion); private passenger
411 automobile no-fault (PIP); other private passenger automobile liability; private
412 passenger automobile physical damage; commercial automobile no-fault (PIP); other
413 commercial automobile liability; or commercial automobile physical damage ~~[federal~~
414 ~~flood insurance; medical malpractice insurance; accident and health insurance;~~
415 ~~workers' compensation insurance; or surety]~~.

416 (b) No later than 90 days following the end of a calendar year in which a
417 premium surcharge was in effect, each insurer shall provide the Association with an
418 annual premium surcharge report for the calendar year. However, an annual premium
419 surcharge report for a given year is not required if premium surcharges were in effect
420 for less than 45 days within the calendar year.

421 (c) Annual premium surcharge reports shall provide information for each
422 insurance company writing property or casualty insurance in the State of Texas,
423 including affiliated surplus lines insurers, and affiliated insurers not authorized to
424 engage in the business of insurance that issued independently procured insurance
425 policies covering ~~[premises, operations, or]~~ insured property, including automobiles, in
426 the State of Texas.

427 (d) Annual premium surcharge reports shall provide information for all
428 applicable annual statement lines of business for which the insurer reported premium
429 for the applicable calendar year.

430 (e) Annual premium surcharge reports shall provide the following information:

431 (1) the name and contact information of the individual responsible for
432 submitting the report;

433 (2) the five-digit NAIC number of the insurance company;

434 (3) the name of the insurance company;

435 (4) for policies with effective dates, or multi-year policies with anniversary
436 dates, within the calendar year, separately for each surcharge period in effect during
437 the calendar year, and within each surcharge period in effect during the calendar year
438 for all applicable lines of business:

439 (A) For all policies subject to a premium surcharge:

440 (i) the total written premium attributable ~~[or allocated]~~ to
441 ~~[premises, operations, or]~~ insured property, including automobiles, located or principally
442 garaged in the catastrophe area; and

443 (ii) the total written premium attributable ~~[or allocated]~~ to
444 ~~[premises, operations, or]~~ insured property, including automobiles, located or principally
445 garaged outside the catastrophe area; and

446 (B) the total written premium for policies not subject to a premium
447 surcharge because the insured had no ~~[premises, operations, or]~~ insured property,
448 including automobiles, located or principally garaged in the catastrophe area;

449 (5) for policies effective in portions of the calendar year when no
450 surcharge period was in effect, or in the case of multi-year policies with an anniversary
451 date in portions of the calendar year when no surcharge was in effect, the total written
452 premium;

453 (6) the total amount of premium surcharges collected during the
454 applicable calendar year; and

(7) the total amount of premium surcharges remitted to the Association during the applicable calendar year.

(f) The Association shall:

(1) review the reports submitted under this section as necessary to determine:

(A) the consistency of premium surcharges actually remitted to the Association with premium surcharges shown in the reports as collected and the premium surcharges shown in the reports as remitted to the Association; and

(B) the consistency of premiums shown in the reports as attributable to the catastrophe area with premium surcharges shown in the reports as collected by the insurer, given the requirements regarding the determination of premium surcharges in this division;

(2) inform the department of any insurer the Association believes may not be in compliance with the rules established under this division; and

(3) before July 1 on each year reports are required to be submitted to the Association, provide an aggregate summary of the reports to the department.

§5.4191. Premium Surcharge Reconciliation Report.

(a) This section applies ~~[does not apply]~~ to an insurer that, during an applicable calendar year, ~~[exclusively]~~ wrote any or all of the following types ~~[lines]~~ of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (non-liability portion); private passenger automobile no-fault (PIP); other private passenger automobile liability; private

passenger automobile physical damage; commercial automobile no-fault (PIP); other
commercial automobile liability; or commercial automobile physical damage [federal
flood insurance; medical malpractice insurance; accident and health insurance;
workers' compensation insurance, or surety].

(b) Upon the written request of the department, an insurer shall provide the department with a premium surcharge reconciliation report for the year specified by the department in its request.

(c) Reconciliation reports shall be provided to the department within 10 working days after the date the request is received by the insurer.

(d) Reconciliation reports shall consist of the following information concerning premiums written and surcharges collected, separately for each applicable surcharge period, including periods in which no premium surcharges were in effect, within the specified year:

(1) premium written at policy issuance for policies effective within the year, including anniversary dates within the year on multi-year policies, separately for:

(A) premium subject to a premium surcharge, including premium attributable [allocated] to the catastrophe area on policies having [premises, operations, or] insured property, including automobiles, located or principally garaged both in and outside of the catastrophe area; and

(B) premium not subject to a premium surcharge, including premium not attributable [allocated] to the catastrophe area on policies having [premises, operations, or] insured property, including automobiles, located or principally garaged both in and outside of the catastrophe area; and

(2) premium written due to mid-term coverage changes occurring within the specified time period separately for:

(A) premium increases subject to a premium surcharge, including premium attributable ~~[allocated]~~ to the catastrophe area on policies having ~~[premises, operations, or]~~ insured property, including automobiles, located or principally garaged both in and outside of the catastrophe area; ~~[and]~~

(B) premium decreases subject to a refund or credit of the premium surcharge, including premium attributable to the catastrophe area on policies having insured property, including automobiles, located or principally garaged both in and outside of the catastrophe area; and

(C) ~~[(B)]~~ premium not subject to a premium surcharge, including premium increases and decreases not attributable ~~[allocated]~~ to the catastrophe area on policies having ~~[premises, operations, or]~~ insured property, including automobiles, located or principally garaged both in and outside of the catastrophe area ~~[and premium refunds, whether related to coverage within or without the catastrophe area]; and~~

(3) unearned premiums returned due to mid-term cancellations occurring within the specified time period separately for:

(A) premium subject to a premium surcharge, including premium attributable to the catastrophe area, on policies having insured property, including automobiles, located or principally garaged both in and outside of the catastrophe area;

(B) premium not subject to a premium surcharge, including premiums not attributable to the catastrophe area on policies having insured property,

including automobiles, located or principally garaged both inside and outside of the catastrophe area; and

(4) [(3)] total premium due to post-term premium changes occurring within the specified time period, including adjustments due to premium or exposure audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration, separately for:

(A) premium subject to a premium surcharge, including premium attributable ~~[allocated]~~ to the catastrophe area on policies having ~~[premises, operations, or]~~ insured property, including automobiles, located or principally garaged both in and outside of the catastrophe area; and

(B) premium not subject to a premium surcharge, including premium not attributable ~~[allocated]~~ to the catastrophe area on policies having ~~[premises, operations, or]~~ insured property, including automobiles, located or principally garaged both in and outside of the catastrophe area; and

(5) [(4)] separately for paragraphs (1)(A), (2)(A), and ~~[(3)(A)]~~ (4)(A) of this subsection, the amounts of premium surcharges collected; ~~[and]~~

(6) separately for paragraphs (2)(B), (3)(A) and (4)(A) of this subsection, the amounts of premium surcharges refunded or credited to the insured;

(7) the total amount of premium surcharges claimed as offsets by the insurer pursuant to §5.4187 of this division (relating to Offsets); and

(8) [(5)] the total amount of written premium for policies written in the State of Texas as reported in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas.

(e) Nothing in this section limits the department's authority to obtain information from insurers under the Insurance Code.

(f) A report provided to the department under this section may be provided to the Association.

§5.4192. Data Collection.

(a) The department may request from each insurer the information necessary to enable the department to determine the premium surcharge percentage applicable to insureds with ~~[premises, operations, or]~~ insured property, including automobiles, located or principally garaged in the catastrophe area.

(b) For lines of insurance subject to ~~[\$5.4182 of]~~ this division ~~[(relating to Allocation Method for Specified Lines of Insurance)]~~ for policies in force on or after October 1, 2011, ~~[and for lines of insurance subject to §5.4183 of this division (relating to Allocation Method for Other Lines of Insurance) for policies effective on or after October 1, 2011,]~~ each insurer shall maintain sufficient records to report, ~~[the following information to the department:]~~

~~[(4)]~~ for policies where the premium surcharge was, or would be determined under ~~[\$5.4182 or §5.4183(1) of]~~ this division, the total written premium attributable to the catastrophe area for policies with ~~[premises, operations, or]~~ insured property, including automobiles, located or principally garaged in the catastrophe area, ~~[:and]~~

567 ~~[(2) for policies where the premium surcharge was, or would be~~
568 ~~determined under §5.4183(1) or (2) of this division, the total written premium allocated~~
569 ~~to the catastrophe area.]~~

570 (c) When possible, and practical, the department will obtain information from the
571 Texas Surplus Lines Stamping Office prior to requesting information from affiliated
572 surplus lines insurers.

573 (d) Nothing in subsection (c) of this section should be read to mean that
574 subsections (a) and (b) of this section do not apply to affiliated surplus lines insurers.

575 (e) Nothing in this section limits the department's authority to obtain information
576 from insurers under the Insurance Code.